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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Doc. No. AMS-FV-12-0071; FV13-955-1 FIR]

Vidalia Onions Grown in Georgia; Change in Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim rule that changed the reporting and assessment requirements prescribed under the marketing order for Vidalia onions grown in Georgia (order). The interim rule changed the date by which handlers are required to submit monthly shipping reports and their corresponding assessments to the Vidalia Onion Committee (Committee) from the fifth day of the month to the tenth day of the month. In addition, the interim rule also changed the due date to the first business day after the tenth day of the month, should the tenth fall on a weekend or a holiday. These changes benefit handlers without negatively affecting program compliance.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Corey Elliott, Marketing Specialist, or Christian Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3378, Fax: (863) 325-8793, or E-mail: Corey.Elliott@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of Vidalia onions grown in Georgia is regulated by 7 CFR part 955. Prior to this change, the order's reporting requirements required handlers to file a monthly shipping report and pay corresponding assessments on the fifth day of each month following the month in which shipments were made. In addition, should the fifth day of the month fall on a weekend or holiday, both reports and assessments were due on the first business day prior to the fifth.

These reporting requirements caused difficulties for handlers as they did not have sufficient time to close out their internal month-end sales paperwork in time to submit their reports by the fifth of the month or sooner if the fifth was on a weekend or a holiday. Therefore, this rule continues in effect the interim rule published in the **Federal Register** on May 14, 2013, and effective on May 15, 2013, (78 FR 28118, Doc. No. AMS-FV-12-0071, FV13-955-1 IFR) that extended the monthly reporting and assessment due date an additional five days to the tenth day of the month.

This rule also continues the change that when the tenth day falls on a weekend or a holiday, the due date is the next business day following the tenth. These changes allow handlers sufficient time to complete their monthly reports and to submit their assessments.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 handlers of Vidalia onions who are subject to regulation under the order and approximately 80 onion producers in the designated production area. Small agricultural service firms, which include handlers, are defined by the Small Business

Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

Based on the National Agricultural Statistical Service (NASS) and Committee data, the average annual grower price for fresh Vidalia onions during the 2012 season was around \$17 per 40-pound container, and total Vidalia onion shipments were around 4,450,000 40-pound containers. Using available data, we estimate that more than 90 percent of Vidalia onion handlers have annual receipts of less than \$7,000,000. However, the average receipts for Vidalia producers were around \$946,000 in 2012, which is higher than the SBA threshold for small producers. Assuming a normal distribution, the majority of handlers of Vidalia onions may be classified as small entities, while the majority of producers may be classified as large entities, according to the SBA definition.

This rule continues in effect the action that changed the reporting and assessment requirements prescribed under the order. This rule revises sections 955.101 and 955.142 to change when monthly shipping reports and assessments, respectively, are due to the Committee from the fifth day

of the month to the tenth day of the month following the month in which the shipments were made. In addition, this rule also changes both sections to specify that should the tenth fall on a weekend or a holiday, the due date will be the first business day after the tenth day of the month. These changes are expected to benefit handlers by providing additional time to complete and submit reports and assessments without negatively affecting program compliance. Authority for these changes is provided for in sections 955.60 and 955.42.

It is not anticipated that this action will impose any additional costs on the industry. This action relaxes the current due dates for monthly reports and assessments, which should benefit all businesses. Handlers may see reduced costs as they have more time to submit reports without accruing late payment penalties. The effects of this rule are expected to benefit both large and small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Generic Vegetable Crops. No changes in those requirements

as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 9, 2012, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before July 15, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:
<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0071-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 28118, May 14, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 955 - VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim rule that amended 7 CFR part 955 and that was published at 78 FR 28118 on May 14, 2013, is adopted as a final rule, without change.

Dated: September 10, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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